

Florida Casino Cruises, Inc. and American Maritime Officers, Petitioner. Case 12-RC-8030

January 10, 1997

ORDER DENYING REVIEW

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND HIGGINS

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (pertinent portions of which are attached as an appendix). The request for review is denied as it raises no substantial issues warranting review.¹

¹ Review was requested of the Regional Director's finding that the petitioned-for unit of marine crew employees, including first mates, second mates, able-bodied seamen, deck engine utility/ordinary seamen, chief engineers, assistant engineers, and ordinary seamen is appropriate for bargaining.

**APPENDIX
DECISION AND DIRECTION OF ELECTION**

The Petitioner seeks a bargaining unit of all full-time and regular part-time first mates, second mates, able-bodied seamen, deck engine utility/ordinary seamen, chief engineers,³ assistant engineers, and ordinary seamen.⁴ Contrary to the Petitioner, the Employer contends that a "wall to wall" unit is appropriate. There are approximately 18 employees in the unit the Petitioner seeks to represent, approximately 136 employees in the unit the Employer contends is appropriate, and approximately 18 employees in the unit found appropriate here.

For approximately 2 years, the Employer has been engaged in the operation of a casino cruise ship, the *Vegas Express*, that operates out of Dania, Florida. The *Vegas Express* is a U.S. flag passenger vessel that is documented through the U.S. Coast Guard. The vessel holds approximately 450 passengers and crew. The *Vegas Express* carries passengers out to sea for approximately 5 hours where casino gaming takes place.

The employees working aboard the *Vegas Express* are divided into seven departments: marine, beverage, poker, cashier, casino, food concession, and cruise directors. The captain is responsible for the safety of the vessel and all passengers and is in charge of all employees working aboard the *Vegas Express*. Additionally, the captain heads the marine department. Each of the other departments is separately supervised:

³ The parties stipulated that the first mate, chief engineer, and bosun are not supervisors and are appropriately included in any bargaining unit found appropriate. I am satisfied that this stipulation is supported by the record. See *Chevron Shipping Co.*, 317 NLRB 379 (1995).

⁴ The ordinary seamen at the time of the hearing were Richard Tasse, Robert Beauregard, and Michael Voelker. The classification ordinary seaman refers to these three individuals, not watchmen/ordinary seamen nor those individuals possessing ordinary seaman certification from the Coast Guard.

the beverage director is in charge of the beverage department; the poker department is headed by the poker manager; the cashier department is headed by a manager; the casino department has two supervisors, director of casino operations and a manager; the food department is supervised by two managers; and the cruise director department is supervised by the manager of cruise directors.

The Employer's marine department includes all of the petitioned-for employees and 11 watchmen/OS. The first mate⁵ is second in command after the captain aboard the vessel. He schedules assignments for the crew, has navigational responsibilities, and serves with the captain as medical officer aboard the vessel. The first mate is also responsible for the safe operation of the vessel inasmuch as he schedules maintenance and performs safety inspections and cleaning inspections. Any first aid rendered aboard the *Vegas Express* is directed by the captain or the first mate. The first mate earns \$103.30 per trip.

The second mate assists the first mate with navigational watches on the bridge of the vessel. The second mate also supports safety and maintenance requirements, as well as assisting with crew instruction, cleaning, line handling, and passenger safety. The second mate is paid \$99.90 per trip.

The chief engineer is in charge of all machinery space in the vessel, and is responsible for maintaining and servicing all machinery. He also runs the plant and all auxiliary equipment. The chief engineer is responsible for all scheduling in the engineering department. The chief engineer position is assisted in all functions by an assistant engineer. The chief engineer earns \$152 per trip and the assistant earns \$99.90 per trip.

The ship also has four employees designated as able-bodied seamen (AB). An AB is responsible for maintenance of the ship. Specifically, an AB performs cleaning, painting, chipping, line handling, navigational watches, prepares the vessel for untying, and removes all trash from the ship to on-shore dumpsters after a sailing. ABs also assist passengers when needed, and are responsible for driving the trolleys which shuttle passengers to and from the vessel. Trolley driving takes approximately 1 hour prior to sailing and 15 minutes following the voyage. One AB is appointed bosun, apparently for each trip. The bosun reports directly to the first mate for the daily assignments, then communicates those assignments to the other AB personnel. The bosun is responsible for setting up the trolley operation, setting up cleaning, setting up watch rotation on the bridge, and scheduling breaks for the deck gang.⁶ An AB earns \$72 per trip, while the bosun makes \$85.50 per trip.

The deck engine utility position (DEU) is responsible for the cleanliness of the vessel, line handling, and augmenting the fire emergency team. According to the captain, an OS is the lowest ranking member of the deck gang and is responsible for the same cleaning tasks as an AB. OS employees earn \$64 per trip if they have lifeboat training and \$59.40 per trip if they do not.

The 11 employees classified by the Employer as watchmen/OS all have responsibilities for security or surveillance.

⁵ There are two employees holding the designation first mate, but only one works aboard the vessel per sailing.

⁶ The ship's organizational plan and Employer's job description indicate that the deck gang is composed of ABs, DEUs, OSs, and watchmen.

lance or as slot technicians. Security personnel patrol the ship for passenger safety and hazards. These patrols occur over the entire vessel. Security personnel do not carry badges or any identification indicating that they work in security. Surveillance employees view one of six surveillance screens located in the surveillance room. The surveillance screens show projections from 42 cameras located in a variety of areas around the vessel. The seven employees performing security and surveillance report directly to Mike Lord,⁷ whose job title is head of surveillance. Security and surveillance employees occasionally assist with line handling duties.

There are four employees working as slot technicians in the watchman/OS classification. Slot technicians are responsible for repairing slot machines, paying out slot jackpots, and providing change for passengers. Slot technicians report directly to the slot manager, Darrin Pachman,⁸ who is also classified by the Employer as watchman/OS.

The record discloses that ABs, OSs, and watchmen/OS employees occasionally supplement their income with tips received for driving the trolley and assisting passengers. However, these employees are not dependent on tips as their primary source of income.

Coast Guard regulations require a captain, two ABs, one lifeboat certified OS, and three watchmen as a minimum complement to sail the vessel. However, the record discloses that the captain has an arrangement with the Coast Guard allowing utilization of slot technician, security, and surveillance employees as watchmen.

The ship's station bill calls employees in the food, beverage, and cruise director departments the steward department.⁹ The beverage department consists of cocktail waitresses and bartenders. Waitresses are responsible for selling and serving drinks and cleaning up their work areas. The one waitress who testified stated that she spends 90 percent of her worktime serving passengers and cleaning up. Waitresses earn \$13.50 per trip plus tips, bartenders earn \$25 per trip plus tips. The food department is comprised largely of cooks and servers. Cooks prepare the food, while servers serve the passengers in the vessel dining areas. Cooks earn between \$48 and \$67 per trip. Cruise directors are responsible for checking passenger attendance, welcoming passengers on board, and providing entertainment.

The two departments primarily responsible for gambling activities are the poker and casino departments. Both departments are comprised largely of dealers. Dealers conduct poker, blackjack, and other card games. The record testimony indicates that dealers earn \$13.50 per shift plus tips, with tips constituting 80 to 85 percent of their pay.¹⁰ Dealers have occasionally assisted with the driving of the trolley. Cashiers

are part of the casino department according to the ship's station bill.

All employees working aboard the *Vegas Express* are required to get Coast Guard documentation, known as a "z-card," which designates them as ordinary seamen. Every employee has specific duties during emergency situations. The specific duties of every crew member are laid out depending on the type of emergency in the ship's station bill. Each employee has responsibility for contributing to the safe operation of the vessel. Every employee is subject to a safety evaluation by the captain. In furtherance of a safe operation, the captain conducts weekly safety drills involving every employee. Also, the Coast Guard conducts quarterly, semi-annual, and annual drills which involve every employee listed on the station bill. The record reflects that the Coast Guard drill lasts approximately 10 hours, but employees not in the marine crew¹¹ are only required to participate in the drill for about 4 hours.

All employees are subject to the same rules, regulations, and operating procedures while working aboard the vessel, including the same drug-testing policy. Employees all receive the same new hire packet and employee handbook. All vessel employees receive the same vacation and health insurance benefits. Any employee may be selected employee of the month. The employee handbook and personnel policy manual are applicable to all employees. All employees attend the Employer's Christmas party. Employees share a common break area in the aft area of the main deck. Also, employees eat their meals in the main dining room side by side with other employees of all classifications and passengers.¹²

The record reflects two instances of transfer. One employee went from AB to security and one slot technician previously held the classification of DEU/OS.

Based on the foregoing and the record as a whole, and contrary to the Employer's contention, I do not find that an all employee unit is the only appropriate unit here. Rather, in agreement with the Petitioner, I find that the petitioned-for unit constitutes an appropriate unit.

It is well settled Board law that a labor organization need not seek to represent only the most appropriate unit or most comprehensive unit, but only an appropriate unit. *Transerv Systems*, 311 NLRB 766 (1993), *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950). Where the parties disagree as to what constitutes an appropriate bargaining unit, and there is an absence of bargaining history, the touchstone for determining the appropriate bargaining unit is a community of interest analysis. See *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962). Moreover the Petitioner's desire as to the unit is a relevant consideration, though not a dispositive one. *Airco Inc.* 273 NLRB 348 (1984).

It is undisputed that the petitioned-for employees share a community of interests. The job functions of the petitioned-for employees deal with navigation, roving patrol, ship cleaning, ship maintenance, line handling, and safety. These em-

⁷ The Employer declined to stipulate that Lord is a supervisor. The record reflects that Lord has fired two employees who were employed as security officers.

⁸ Neither party took a position with respect to the supervisory status of Pachman. The captain testified that he was sure that Pachman fired people, but could not provide specific details.

⁹ There was testimony that the steward department also includes dealers; however, the vessel's station bill contradicts this testimony.

¹⁰ The captain estimated dealers' wages at between \$17 and \$25 per shift; however, the testimony of a dealer indicated a wage of \$13.50 per trip.

¹¹ The record reflects in this instance that employees not in the marine crew would be all food, beverage, poker, cashier, casino, cruise director departments, and those employees designated as watchman/OS.

¹² One witness contests this point, stating that the captain prefers that marine employees eat separately from other employees. However, at least three witnesses testified that all employees eat side by side in the main dining room without restriction.

ployees, constituting the marine crew, are all ultimately accountable to the captain. The marine crew are all paid by the shift, and although they receive tips, they are not dependent on tips for their primary source of income. The record reflects that they receive assistance in carrying out their line handling duties and occasionally in driving the trolley, but not in their other duties. Moreover, the record reflects that although members of the marine crew occasionally assist food and beverage employees in performing a "bus boy" function, they do not perform any other functions for other departments. Also, the record reflects that in those instances where the marine crew assists food and beverage employees, such assistance is provided on a voluntary basis.

The 11 employees classified as watchmen/OS by the Employer do not share such a substantial community of interests with the petitioned-for employees so as to require their inclusion in the unit found appropriate here. The record reflects that each employee in the watchman/OS classification actually performs functions in security, surveillance, or as slot technicians. The record evidence indicates that security employees regularly handle lines, but the record also discloses that line handling is a routine task and takes only about 20 minutes before and after sailing. With respect to temporary interchange, there is evidence indicating one AB filled in for security on approximately 15 occasions, over a period of several weeks, when the Employer was experiencing a shortage of security personnel. There is no record evidence of a watchman/OS filling in for any other employee classification. Security and surveillance employees report directly to Mike Lord, head of surveillance. Slot technicians report directly to the slot manager, not the first mate or captain. The record reveals a different pay structure for these employees as compared with the marine crew. These employees are paid an hourly wage of between \$9 and \$11.70¹³ and punch a time-clock, while the marine crew does not punch a clock and is paid by the shift. The record discloses that all employees have regular contact, but most of the contact is social in nature. There is little overlap of job functions. Participation in the weekly and quarterly drills and daily social interaction is insufficient work-related contact to mandate including these employees in the petitioned-for unit. Given the different job functions and skills, different first-line supervision, the different rates and method of pay and minimal interchange, I conclude that the watchmen/OS employees need not be included in the petitioned-for unit.

Contrary to the Employer, I find that the food and beverage employees do not share a sufficient community of interest with the petitioned-for employees to require their inclusion in the unit. Beverage department employees are supervised by the beverage director, while food department employees are supervised by the food managers. Aside from occasional line handling assistance rendered to the marine crew and assistance from the marine crew in a "bus boy" func-

tion, there is no overlap of job function. Moreover, based on the per-shift wage paid to food and beverage employees, it is clear that these employees are dependent on tips for the majority of their income. With the exception of a food department employee standing an occasional navigation watch as an ordinary seaman, the record is devoid of any other instances of temporary interchange between the marine crew and the food and beverage departments. Similarly, there is no record evidence of any permanent transfers between the marine crew and food and beverage departments. While food and beverage employees share common meal and dining areas with the marine crew and have daily social interaction with the marine crew, there is not sufficient job-related contact to require their inclusion in the petitioned-for unit. Aside from the weekly and quarterly drills, work-related interaction is minimal. For all of the foregoing reasons, I find that food and beverage employees do not share a sufficient community of interests with the petitioned-for unit to require their inclusion therein.

I also find that poker, casino, and cashier department employees do not share a substantial community of interest with the petitioned-for employees. These employees are separately supervised and have a pay system dependent on tips and different job functions than those of the petitioned-for employees. As with the excluded employees discussed above, the instances of job-related contact between the marine crew and poker, casino, and cashier employees does not require their inclusion in the petitioned-for unit.

I likewise conclude that cruise directors need not be included in the petitioned-for unit. The job skills of cruise directors and the marine crew are dissimilar and there is no interchange between the positions on either a temporary or permanent basis. Furthermore, they are separately supervised. Therefore, I shall exclude the cruise directors from the unit found appropriate here.

Accordingly, and noting that no other labor organization seeks to represent the employer's employees in a more comprehensive unit, in view of the foregoing and the record as a whole, I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time first mates, second mates, able-bodied seamen, deck engine utility/ordinary seamen, chief engineers, assistant engineers and ordinary seamen; but excluding all watchmen/OS, cocktail waitresses, bartenders, dealers, cooks, servers, waiters, cruise directors, managers, assistant managers, VIP hosts, cashiers, office clerical employees, guards and supervisors¹⁴ as defined in the Act.

¹³ The record reflects that slot technician Michael MacKenzie is paid \$360 weekly.

¹⁴ The parties stipulated, and I find, that the captain, beverage director, poker manager, cashier manager, director of casino operations, casino manager, manager of cruise directors, and two food managers, Donna Dileo and Lydia Pintilie, are supervisors within the meaning of the Act.